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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/286,818	04/06/1999	RONALD L. REAM	P99.0082	5472

29156 7590 10/18/2002

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EXAMINER

TRAN, SUSAN T

ART UNIT	PAPER NUMBER
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1615

DATE MAILED: 10/18/2002

34

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/286,818

Applicant(s)

REAM ET AL.

Examiner

Susan Tran

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12 and 19-22 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-12 and 19-22 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). ____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 30. 6) ☐ Other: _____

DETAILED ACTION

Receipt is acknowledged of applicant's Information Disclosure Statement, Request for Extension, Preliminary Amendment D, Request for Continued Examination, and Request for Access filed 07/16/02.

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 08/28/02 has been entered.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-4, 6-11, and 19, 20, and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cherukuri et al. US 5,013,716.

Cherukuri teaches chewing gum composition comprising elastomer as gum base, fats, oils, softener, filler, wax, colorant, plasticizer, acidulant, bulking agent, and

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sweetener (columns 8-10). The composition further comprising medicament (column 6). Cherukuri does not teach chewing the chewing gum, and continuing to chew the chewing gum to create a fluid pressure or saliva content of medicament of approximately 1700 to about 4400 ppm, causing the medicament to absorb through oral mucosa. However, when the claimed and prior art products are identical or substantially identical in structure or composition, or are produced by identical or substantially identical processes, a *prima facie* case of either anticipation or obviousness has been established. In re Best, 562 F.2d 1252, 1255, 195 USPQ 430, 433 (CCPA 1977). The court went on to say that it was immaterial what properties the alloys had or who discovered the properties because the composition is the same and thus must necessarily exhibit the properties. Accordingly, it would have been *prima facie* obvious for one of ordinary skill in the art to chew or continue chewing the chewing gum to obtain the desirable amount to medicament through oral mucosa membrane.

Claims 5, 12, and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cherukuri et al.

Cherukuri is relied upon for the reason stated above. Cherukuri does not teach chewing the chewing gum at least twice a day. However, it is the position of the examiner that the amounts of medicament being administered are within the capability of the skilled artisan to determine a suitable dosage according to the daily needed basis.

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Claims 1, 7, and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cherukuri et al., and Hausler et al. US 5,922,347.

Cherukuri is relied upon for the reason stated above. Cherukuri does not teach chewing the chewing gum, and continuing to chew the chewing gum to force the medicament to absorb through oral mucosa

Hausler teaches a stable chewing gum formulation comprises active drug (column 2, lines 8-56), filling, emulsifying, waxes, plasticising, and sugar (column 3, lines 11-67). Thus, it would have been *prima facie* obvious for one of ordinary skill in the art to modify Cherukuri's chewing gum composition with the teaching of Hausler to obtain a safe and stable chewing gum containing medicament, which is tolerated by the mucous membrane, because the references teach the advantageous results of medicament chewing gum compositions useful in pharmaceutical art.

Pertinent Arts

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Peters et al. is cited as being of interest for the teaching of medicament chewing gum.

Correspondence

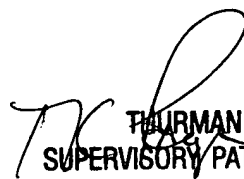
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Susan Tran whose telephone number is (703) 306-

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5816. The examiner can normally be reached on Monday through Thursday from 6:00 am to 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thurman Page, can be reached on (703) 308-2927. The fax phone number for the organization where this application or proceeding is assigned is (703) 305-3592.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1235.


THURMAN K. PAGE
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1600